

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 16397
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On January 3, 2002, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioner), asserting income tax, penalty, and interest in the amount of \$8,003 for the taxable years 1996 through 1999. The notice advised the petitioner that if he disagreed with the deficiency he could petition the Tax Commission for a redetermination.

On March 6, 2002, the petitioner filed a letter of protest which the Commission treated as a petition for redetermination. The Commission notified the petitioner that he could meet with a Commissioner or a designee in an informal conference to discuss the deficiency determined by the Bureau, or, in the alternative, he could submit additional information to show why the deficiency should be redetermined.

The petitioner requested an informal conference to be conducted by means of telephone and submitted written information in advance of the conference. Pursuant to the petitioner's request a telephone conference was conducted on July 3, 2002.

This decision is based on the information contained in the Commission's files. Information submitted by the petitioner and discussed at the informal conference, as well as anecdotal information, was placed in, and made a part of the Commission's file. The Commission has reviewed the file, is advised of its contents, and now issues this decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau.

This is a nonfiler case. The petitioner moved to Idaho in 1995, but he has not filed Idaho income tax returns since moving to this state. The petitioner lives in a subdivision named [Redacted].

The Tax Discovery Bureau received a federal audit indicating the petitioner received \$25,358 of income in 1996 from an unidentified small business. The petitioner also purchased resident fish and game licenses since moving to Idaho. Based on this information, the Bureau contacted the petitioner and stated it appeared the petitioner might be required to file Idaho income tax returns for the years in question.

When contacted by the Bureau, the petitioner asserted he was retired. He stated that he did not have a filing requirement because his gross income did not exceed the statutory threshold amount. The petitioner declined to provide more specific information or to file income tax returns.

Upon further investigation the Bureau discovered the petitioner purchased a vehicle in 1998 with an estimated value that exceeded the threshold-filing amount. The Bureau also found that since moving to Idaho, the petitioner registered several vehicles in this state: a [Redacted] pickup truck. Based on the available registration information the 1993 pickup appears to have been financed through First Security Bank of Boise, Idaho and later refinanced through [Redacted] Having gathered these facts, the Bureau determined the petitioner was an Idaho resident with a filing requirement. The Bureau relied upon the \$25,000 gross income reported in the federal audit and prepared provisional returns for the tax years in question. The Bureau allowed personal exemptions, standard deductions, and grocery credits when it prepared the provisional returns. A credit for withholding tax was not provided since the petitioner did not file returns or provide any withholding information. The total amount of the deficiency determined by the Bureau for all taxable years was

\$8,003 (tax, penalty, and interest). The Bureau issued a Notice of Deficiency Determination in that amount on January 3, 2002.

Anecdotal information discovered by the Commission's field staff indicates that the petitioner is operating as a general building contractor in the [Redacted] area. Additionally, as of the date of the informal conference, the petitioner had listed his house for sale. The asking price of the house is listed at \$215,000.

The petitioner seeks a redetermination of the deficiency on several grounds. The petitioner believes he is not required to report his wages and compensation or to file Idaho tax returns because: (1) he was not engaged in a revenue taxable activity during the tax years in question; (2) wages are not income; (3) filing a return would violate his 5th amendment rights; and (4) the Commission failed to assess taxes against him under the procedures set forth in Idaho Code § 63-3044(a)(2).

Most of the petitioner's stated grounds for redetermination are common tax protestor themes which state and federal courts have rejected time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, Judge Easterbrook penned,

Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. "Tax protesters" have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

The petitioner asserts some of the same arguments discussed by Judge Easterbrook. Simply stated, the petitioner's arguments are not supported by fact or law.

The petitioner makes a general claim for exemption on the ground that he "is not involved in a revenue taxable activity." The petitioner works in the construction trade as a general building

contractor. He apparently believes the income he derives from his business activities does not qualify as "income subject to taxation."

The Sixteenth Amendment provides Congress the power to tax income from whatever source derived. Under this broad Constitutional grant of authority, Congress has defined the term gross income to include compensation for services. Section 61 of the Internal Revenue Code provides that, except as otherwise provided in Subtitle A of the Internal Revenue Code, "gross income means all income from whatever source derived." Idaho has incorporated these provisions in its tax laws. Section 63 of the Internal Revenue Code defines taxable income as "gross income minus the deductions allowed under this chapter."

63-3002. Declaration of intent. It is the intent of the legislature by the adoption of this act, **insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code** relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; **to impose a tax on residents of this state measured by Idaho taxable income wherever derived** and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Idaho Code § 3002 (Emphasis added). Idaho Code §63-3022 defines the term "taxable income" to mean "'taxable income' as defined in section 63 of the Internal Revenue Code, adjusted as provided" in the Idaho Income Tax Act. As incorporated into the Idaho Income Tax Act, an individual is subject

to Idaho income tax on his income from all sources, unless express federal or state exemptions, adjustments, or limitations apply. I.R.C. § 61(a)(1).

The compensation the petitioner receives from his construction trade clearly meet the definition of gross income under the Internal Revenue Code. The petitioner has not provided any information to establish that his income is exempt under an express federal or state law.

To the extent that the petitioner receives “wages” for his labor and services, such wages also are subject to federal and state income tax. As the United States Supreme Court stated in Eisner v. Macomber, 252 U.S. 189 (1920), the term “income” is defined for income tax purposes as gain derived from capital, from labor, or from both. Since Macomber, the courts have consistently held that wages or “compensation for labor” is income for income tax purposes. Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir. 1986); United States v. Lawson, 670 F.2d 923 (10th Cir. 1982); United States v. Buras, 633 F.2d 1356 (9th Cir. 1980); Mitchell v. Agents of State, 105 Idaho 419, 425 (1983); State v. Staples, 112 Idaho 105, 107 (Ct. App. 1986); Parsons v. Idaho State Tax Com’n, 110 Idaho 572, 575 (Ct. App. 1986).

With respect to the petitioner’s claim of Fifth Amendment immunity, it is true that the Fifth Amendment of the United States Constitution protects an individual from compelled self-incrimination. It is well settled, however, that a blanket claim of Fifth Amendment immunity is insufficient to avoid the legal requirement to file an income tax return. Garner v. United States, 424 U.S. 648, 651 (1976); California v. Byers, 402 U.S. 424, 430 (1971); United States v. Campbell, 619 F.2d 765, 769 (8th Cir. 1980); United States v. Stout, 601 F.2d 325, 332 (7th Cir. 1979); United States v. Edelson, 604 F.2d 232, 235 (3d Cir. 1979); United States v. Johnson, 577 F.2d 1304, 1311 (5th Cir. 1978); Idaho State Tax Commission v. Peterson, 107 Idaho 260, 262 (1984). Absent some factual basis to show that the petitioner is faced with a real and substantial danger of

self-incrimination, he remains legally obligated to complete and file his Idaho returns. See, e.g., Marchetti v. United States, 390 U.S. 39, 53 (1968). (“The central standard for the privilege’s application has been whether the claimant is confronted by substantial and ‘real,’ and not merely trifling or imaginary, hazards of incrimination.”).

The petitioner also asserts the Commission failed to assess him in the manner set forth in Idaho Code § 63-3044(a)(2), which provides:

63-3044. DEFICIENCY IN TAX. . . . (2) A tax assessment shall be made by recording the liability of the taxpayer along with an identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The assessment shall be kept and maintained in a record in the office of the state tax commission in accordance with rules prescribed by the tax commission. Upon request of the taxpayer, the tax commission shall furnish the taxpayer a copy of the record of assessment. No tax commission activities to enforce collection of tax may be conducted, nor may a proceeding to collect a tax be instituted, until assessment of the tax has been made in accordance with the provisions of this section. Taxes and related interest may be assessed immediately upon receipt of a tax return, amended return or other consent signed by the taxpayer or the taxpayer's authorized representative showing the taxes due. The tax commission may presume that the signature is the signature of the taxpayer or the taxpayer's authorized representative until the contrary is established by a preponderance of the evidence.

Idaho Code § 63-3044 (2002). The petitioner has confused a Notice of Deficiency Determination with a final assessment of taxes, penalty and interest. As the Commission repeatedly advised the petitioner, an assessment will not be made until the petitioner has been afforded all of his hearing and appeal rights.

Subsection (3) of the statute cited by the petitioner recognizes the necessity (absent the filing of a tax return or amended return) of gathering related information and making an appropriate investigation before an assessment is made and collection activities are instituted.

(3) The making of an assessment is not required before the tax commission may conduct audits and investigations or make inquiries of taxpayers or other persons relating to matters within the tax commission's jurisdiction. The making of an assessment is not required before the tax commission may file a judicial action under

section 63-3030A or 63-3064, Idaho Code, or actions for injunctive or declaratory relief.

Idaho Code § 63-3044(3) (2002).

Initially, the Commission conducts an audit or investigation to determine whether or not a possible deficiency exists. When the Commission finds that a person failed to file a tax return or to pay the proper amount of individual income tax, the Commission issues a Notice of Deficiency Determination.

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery . . .

Idaho Code § 63-3045 (2002). In addition to providing for the issuance of a Notice of Deficiency, Idaho Code § 63-3045 provides taxpayers with the right to seek a redetermination of the notice deficiency.

The statute outlines the procedures to be followed when a taxpayer seeks a redetermination of a deficiency. A taxpayer may file a written protest seeking a redetermination within 63 days after the Notice of Deficiency Determination is mailed. Following a protest, the taxpayer has a right to a hearing before a Tax Commissioner or a duly authorized representative of the Commission to discuss the deficiency. The hearing or “meeting” is held “informally” and “evidence shall be freely admitted regardless of the rules of evidence.” Idaho Code § 63-3045(2). Once, the informal conference is conducted, the Commission may withdraw the deficiency, compromise the deficiency or issue a written decision.

In the event the Commission issues a written decision that is adverse to a taxpayer, the taxpayer may appeal the Commission’s decision. Generally speaking, an appeal may be filed with

either the Idaho Board of Tax Appeals or an appropriate state district court. See Idaho Code § 63-3049.

A deficiency determined by the Commission does not become an assessment until the taxpayers have been provided the opportunity to avail themselves of their appeal rights. Idaho Code § 63-3045(1)(c) specifically provides:

- (c) No assessment of a deficiency in respect to the [Idaho income] tax imposed by the chapter, and no distraint or proceedings in court for its collection shall be made, begun or prosecuted, until such notice [of deficiency determination] has been mailed to the taxpayer, nor until all appeal rights relating to the deficiency have become final.

Idaho Code § 63-3045(1)(c) (2002). Conversely, if a taxpayer fails to file a written protest as required by the statute, the deficiency may be assessed immediately and becomes payable upon demand. Idaho Code § 63-3045(5).

In this case, the Bureau found the information reported in the federal audit, as well as the petitioner's history of registering vehicles in this state and receiving Idaho fish and game licenses, indicated the petitioner was required to file Idaho returns and report his income. Anecdotal information also evidences the petitioner was engaged in construction activities in the [Redacted] area. These facts evidence the petitioner was domiciled in Idaho and was an Idaho resident, and apparently received income in excess of the statutory filing amount. Accordingly, the Bureau determined the petitioner's income was subject to Idaho individual income tax, prepared provisional returns for the taxable years in question and issued a Notice of Deficiency Determination.

It is well settled in Idaho that provisional returns determined by the Idaho State Tax Commission are presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioner to show that the tax deficiency is erroneous. Id. The petitioner has failed

to show that the provisional returns prepared by the Tax Commission were incorrect. Therefore, based on the information available, the Tax Commission finds the provisional returns to be a fair representation of the petitioner's taxable income for the taxable years in question and that the amounts shown due on the Notice of Deficiency Determination are true and correct.

WHEREFORE, the Notice of Deficiency Determination dated January 3, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1996	\$ 1,340	\$ 335	\$ 595	\$ 2,270
1997	\$ 1,325	\$ 331	\$ 474	\$ 2,130
1998	\$ 1,313	\$ 328	\$ 340	\$ 1,981
1999	\$ 1,305	\$ 326	\$ 270	<u>\$ 1,901</u>
			TOTAL DUE	<u>\$ 8,282</u>

Interest is calculated through December 31, 2002, and will continue to accrue at the rate of \$0.73 per day until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No. [Redacted]
